IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF JANUARY
TWO THOUSAND AND SIX

PRESENT

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION No. 16656 of 2001

Between:

M/s.White Castle Bakery, Rep. Proprietor A.M.Arshad.
H.No.5-9-1045, King Koti Road,
Basheerbagh, Hyderabad and another

..... PETITIONERS

AND

The Superintending Engineer,
Assessments/APCPDCL, Stone Building,
Mint Compound, Hyderabad and another

.....RESPONDENTS

ORDER:

This writ petition is filed questioning the order dated 13.07.2001 passed in Appeal SAP 1507 of July, 2001 by the Superintending Engineer, Assessments, which was filed against the order of the final assessing authority i.e. Divisional Engineer, Assessments, dated 31.03.1998.

Heard the learned counsel appearing for the petitioners and the learned standing counsel appearing for the respondents.

The petitioners herein are availing the supply of energy for non-domestic purposes vide SC.No.D2-2279 (Category-II) in Hyderguda, Hyderabad from Andhra Pradesh Central Power Distribution Company Limited (for short 'APCPDCL'). The service connection of the petitioners was inspected by the Assistant Engineer, D.P.D.I, Hyderabad on 19.02.1996 and noticed the following incriminating points:

> "Meter terminal cover missing. Meter not working in R&Y phases and going reverse when connected the load. There was no supply in R P H of meter terminal. On verification it was found that R P H and natural are interchanges at meter terminal block. On removing the meter board it is found that incoming service wire of Y P H insulation is taken off and supply tapped directly from incoming service of Y phase. The Y phase load wire from meter is disconnected and insulated at the end and kept idle behind the meter board."

Based on the said incriminating findings, inasmuch as there was a *prima facie* material to show that the petitioners have pilferaged the energy, proceedings were initiated to assess the value of the pilferaged energy. The primary authority i.e. the 2nd respondent-Divisional Engineer, Assessments, after issuing necessary notice, by following the procedure, as contemplated under the provisions of the terms and conditions of the supply framed under Electricity (Supply) Act, 1948, passed orders dated 31.03.1998 in Order No.DEA/HYD-I/DAT565/D.No.2652, finding that the petitioner/consumer had committed pilferage of energy and made herself liable to compensate the loss sustained by the board to a tune of Rs.3,63,234/-. As against

the said order, the petitioners carried the matter in appeal to the appellate authority i.e. Superintending Engineer, Assessments, who has partly allowed the appeal, by reducing the value of the energy pilferaged to Rs.1,86,059/-.

In this writ petition, it is submitted by Sri Nagarjuna Babu Duba, learned counsel appearing for the petitioners that in view of the Andhra Pradesh Amendment Act 35 of 2000, to Indian Electricity Act, 1910, respondents did not have any jurisdiction to assess the compensation and they have to transfer the case to the Tribunal, constituted under the State amendment. Nextly it is contended that the appellate authority also valued the compensation on account of the loss sustained to the respondents for a period of one year, preceding the date of inspection. Further it is submitted that the petitioners have closed their premises during the said period for number of months, but the said aspect was not considered. It is also submitted that inasmuch as the service connection was to run the bakery, and the bakery itself was closed for substantial period, during the said preceding one year, in that view of the matter, loss could not have been assessed for the entire one year period.

On the other hand, it is submitted by Sri V.Ajay Kumar, learned counsel appearing for the respondents that in this case inspection was made on 19.02.1996 and primary authority has passed orders in 1998, even before the amended Act came into force, in that view of the matter, the respondents had jurisdiction to assess the loss. It is further submitted that the appellate authority itself has considered the appeal and granted substantial relief, by reducing the compensation, and even assuming any ambiguity with regard to the period, the respondents had authority to assess the compensation for a period of one year under Clause 39.7.4.3 of the terms and conditions of supply of electricity.

It is not in dispute that prior to the State amendment, the Divisional Engineer, Electric Assessments, is empowered to assess the loss in the cases of pilferage by the consumers. In the State amendment, certain conditions were inserted under Section 49 of the Electricity Act, 1910 (for short 'the Act'), and under Section 49-C of the Act, a Special Tribunal was constituted to try the offences and also to determine the compensation for consideration. Section 49-C(5) of the Act, reads as follows:

> "Any case pending before any Court or other authority immediately before the commencement of the Indian Electricity (Andhra Pradesh Amendment) Act, 2000, as would have been within the jurisdiction of a special Tribunal shall stand transferred to the special Tribunal, having jurisdiction as if the cause of action on which such suit or proceeding is passed had arisen after

such commencement."

A reading of provision under Section 49-C(5) of the Act, coupled with Section 49-C(4) of the Act, makes it clear that the said provision is applicable for transfer of cases, where proceedings are pending before the primary authority. In this case, the inspection was made on 19.02.1996, after making provisional assessment, final assessment proceedings were initiated in 1998 and final order was also passed on 31.03.1998. Inasmuch as no proceedings were pending before any authority as on the said amendment Act came into force, in that view of the matter, the 2nd respondent had jurisdiction to assess the compensation, so far as the petitioners' case is concerned. Inasmuch as the said amendment Act which came into force with effect from 31.07.2000, and even prior to the date, final order was passed in final assessment proceedings on 31.03.1998. In that view of the matter, the submission of the learned counsel for the petitioners that the respondents had no jurisdiction to assess the loss, and ought to have transferred the proceedings to the Tribunal, cannot be accepted. Even with reference to the other submission that the respondents ought to have limited the period to less than one year, for the purpose of assessing the compensation is concerned, it is a matter of evidence before the authorities. However, from a reading of Section 49-C, with regard to the provisional assessment, if there is any ambiguity, the period should be limited to a maximum of one year prior to the date of inspection. In which event, the assessing loss, for the period of one year by the respondents' authority in final assessment proceedings cannot be said to be illegal.

In any event, in case of ***J.M.D.Alloys Ltd. Vs. Bihar State Electricity Board and others***, the scope of judicial review is elaborately considered by the Supreme Court and it is held that Judicial Review, not being an appeal from a decision, but a review of the manner in which the decision was arrived at. In that view of the matter, I do not find any illegality in the orders passed by the primary authority in assessing the loss, as confirmed by the appellate authority.

For the above reasons, the writ petition is devoid of merit, and accordingly, dismissed. No order as to costs.

After pronouncing the dismissal order, the learned counsel for the petitioners submits that substantial amount was already paid pursuant to the provisional

assessment order, and also some part of amount was paid after final order is passed in final assessment, and seeks time to pay the balance amount.

Taking into account of the submissions made by the learned counsel for the petitioners, four weeks time is granted to the petitioners to pay balance amount, in terms of the assessment, as modified by the appellate authority.

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R.SUBHASH REDDY,J

Dated: 31.01.2006

Dsr